

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920

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Pasha Lounge, Inc. d/b/a Pasha Hookah Bar, Appellant,	:	
	:	
v.	:	DBR No. 12LQ101
	:	
Providence Board of Licenses, Appellee.	:	

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**DECISION AND ORDER**

**I. Introduction**

Pasha Lounge, Inc. d/b/a Pasha Hookah Bar (“Appellant” or “Applicant”) applied to the City of Providence Board of Licenses (“Board”) for a Class BV-Limited Liquor License (limited to beer and wine) with a BX License rider (2 am Closing). The Board denied said application on October 12, 2012, and the Appellant timely filed an appeal with the Department of Business Regulation (the “Department”). The Board provided the Department with a certified copy of Board’s Record, which included a list of the names and addresses of the property owners within the 200-foot radius of the Appellant’s premises. The Department mailed notice to all of the listed property owners, advising them of their right “to be heard (or send a letter of objection or approval),” announcing the date, time, and location of the hearing, and listing the contact information for the undersigned. As a result of the discussions held during the pre-hearing conference, the Appellant agreed to apply to the Board for reconsideration, but such request was denied. The Department’s decision was rendered following a *de novo* hearing before the

undersigned, sitting as the designee of the Director of the Department, at which time the Appellant requested the Department approve issuance of a Class BV Limited Liquor License (without the 2 am Closing rider).

## **II. Issue**

The issue on appeal is whether the Department should grant the license application.

## **III. Jurisdiction**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-1-1 *et seq.*, R.I. Gen Laws § 3-7-21 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen Laws §42-35-1 *et seq.*

## **IV. Standard of Review**

Under R.I. Gen. Laws § 3-5-17, “[a] local liquor licensing body has wide discretion in determining whether or not to issue a liquor license.” *Boulevard Billiard Club v. Board of Licenses Com'n of City of Pawtucket*, 1975 WL 170016 at 1 (citing *Board of Police Comm'rs. v. Reynolds*, 86 R.I. 172 (1957)). R.I. Gen. Laws § 3-5-17 does not “specif[y] the criteri[a] to be used by the licensing authority in making its decision.” *Ribiero v. Pastore*, 1983 WL 481440 at 2 (R.I.Super., 1983). Instead, the local licensing authority is vested with “considerable discretion” to evaluate the application based on a variety of factors it deems appropriate. *Id.* Because the appeal of the local licensing authority’s decision to the Department under § 3-7-21(a) is “de novo,” the liquor license application “stands as if no action thereon had been taken by the local board.” *Hallene v. Smith*, 98 R.I. 360, 365 (R.I. 1964)(*emphasis supplied*). Therefore, the Department “has the same broad discretion to grant or refuse such applications as have the local boards.” *Hobday v. O’Dowd*, 94 R.I. 172, 174 (1962).

## **V. Discussion**

### A. Objections

Under § 3-7-19(a), a “[r]etailers’ Class B...license[]...shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200’) of any point of the building files with the body or official having jurisdiction to grant licenses his or her objection to the granting of the license.” In the instant case, despite the fact that written notice was provided to all 34 abutting property owners, only four properties were represented by objectors. The Department received handwritten notes from owners of one 720 sq. ft. property and a second and 1560 sq. ft. property, amounting to a 1.9% remonstrance. The parties representing the two other two properties appear to have signed the “Petition to Deny Liquor License to Pasha Hookah Bar” (“objection petition”) presented to the hearing officer, but failed to exercise their right to object in accordance with the instructions in the written notice by appearing at the hearing or directly contacting the Department. Even assuming the authenticity of these signatures, the remonstrance calculation only rises to a mere 7.4%, a far shout from “legal remonstrance.”

When objections do not rise to the level of a “legal remonstrance,” the hearing officer may, in his or her discretion, consider the substance of the objections, depending on their helpfulness to the hearing officer’s analysis. Objections of concerned citizens outside of the 200 foot zone may also aid the hearing officer’s decision, depending on the level of detail and credibility. The weight to be assigned to the submitted evidence of objection is solely within the hearing officer’s discretion. *Vel-Vil, Inc. v. Pastore*, 1986 WL 732870 at 3 (R.I.Super., 1986).

Signatures on a petition that do not include the reasons for objection are of limited value to the hearing officer’s decision-making. Without an explanation or evidence of any the

“negative impact in [the] neighborhood” alleged by the signatories to the objection petition, the hearing officer is unable to determine whether or not the reasons for objection are valid. For example, the 26 signatures could represent objections based on mere dislike of the applicant or desire of neighboring establishments to limit competition, neither of which would be adequate grounds to deny the application. Of further concern to the undersigned is whether any of the signatories would have continued to object had they known that the Appellant had dropped its request for a 2 am closing. Moreover, the Appellant presented a second petition in favor of granting the license that raises doubt that the objection petition accurately represents strong community opposition.

The undersigned also admitted into the record a letter and brief testimony from the President of the Washington Park Citizens’ Association, Inc., a letter from the State Representative for District 12, testimony of the Director of Community Affairs on behalf of Johnston & Wales University’s, and testimony of Detective Pat Kramer on behalf of Lieutenant Oscar Perez, Providence Police Department, objecting to the license. These objections are too generalized to warrant denial of the license, however. “[B]road concerns regarding health and safety” lacking of any specificity to the Appellant are inadequate grounds for denial. *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No. 10-L-0143 (June 15, 2011). Neither are generalized concerns that the area is saturated with liquor establishments<sup>1</sup> or vague complaints about parking.<sup>2</sup> As in *Krikor*, the above-cited objections only presented global

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<sup>1</sup> *Krikor Id.* at 8 (over-abundance is “a policy argument and is not grounds to overturn the grant of this License.”) Municipalities are legislatively empowered to codify a policy addressing over-abundance of license under R.I. Gen. Laws § 3-5-16, but are required to do use using rule-making formalities. *Tedford v. Reynolds*, 141 A.2d 264, 269 (R.I., 1958). Where the issuance of the Appellant’s license will not violate any limit set by the city, the Department will not deny a license based solely on the generalized argument that there are “too many” in the area.

<sup>2</sup> It is true that the Department has made decisions based on “findings with respect to parking and traffic congestion.” *Ribiero v. Pastore*, 1983 WL 481440 at 3 (R.I.Super.,1983). However, the hearing officer in *Ribiero* was presented with testimony from both the City Planner and the applicant’s traffic expert before denying the license on those grounds. *Id.* The record in this case is simply devoid of such evidence.

concerns with the collateral effects of *any* additional liquor licenses being issued in the neighborhood.<sup>3</sup> Moreover, the Board’s decision notes that the primary objection of the Providence Police Department, represented before the Board by Lieutenant Perez, was “with regard to the application for a BX (2 am closing) license,” a request that was specifically withdrawn by the Appellant in a good faith effort to respond to community objections.<sup>4</sup>

**B. Testimony of Unsal & Zofer Arda, Appellant’s Owners**

The testimony of the Appellant’s owners, Unsal & Zofer Arda, supports granting the application in this case. The undersigned heard testimony that these owners will take a number of affirmative steps to prevent underage drinking and/or smoking in the establishment. The Appellant’s operation plan includes the use of electronic identification card scanners to detect fraudulent cards, a public safety investment that goes beyond the precautions taken by other approved establishments. Moreover, the operation will utilize a bracelet system to identify patrons in the 18-20 class to the distinction of those in the 21+ class in order to prevent service of alcohol to underage persons. The owners of the establishment further testified that they plan to be actively involved in the daily operation of the establishment and to be present on the premises to monitor compliance with underage drinking and smoking laws and regulations.

The testimony of Unsal & Zofer Arda before the undersigned also resolved some misunderstanding that appears to have influenced the Board’s decision. The Board’s decision

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<sup>3</sup> A final objection presented to the undersigned was an e-mail from a Rhode Island Senator involving concerns about the coordinated regulation of “smoking lounges where alcohol is served,” citing lack of “effective oversight” over such establishments by the Department, the Department of Health, and the Division of Taxation; and suggesting that questions as to “proper and adequate authority or staff” “should be resolved” before any additional licenses are granted. While the Senator’s input is greatly appreciated, it is beyond the Department’s purview to make an adjudicatory decision on an individual license based on concerns with the broader regulatory regime applicable to hookah bars.

<sup>4</sup> The JWU Director of Community Affairs also testified as to police department reports regarding incidents at 1031 Narragansett Boulevard, a BV licensed pizza establishment operated by the owners’ relatives. Though one of the owners testified that he has assisted with food service at this location, no violations were specifically linked to his mismanagement or any wrongdoing on his part.

reflects suspicion that the owners misrepresented the establishment as a “fine dining” establishment while masking the intent to open “a lounge, or possibly even a nightclub.” While the Department recognizes that intentionally misleading a local licensing board as to material aspects of the application could be grounds for denial of the application under much different circumstances,<sup>5</sup> the facts in this case do not come close to establishing any bad faith on the part of the Applicant. At the Department hearing, the owners explained that in referring to “fine dining” at the Board hearing, they meant “good food,” typical bar cuisine with good flavor and preparation. Moreover, the Applicant accepted denial of the entertainment license, eliminating the fear that the establishment turn into a “night club;” instead of seeking a DJ at this time, the applicant has been utilizing radio and computerized background music incidental to the service of hookah, food, beer and wine.

The testimony of Unsal & Zofer Arda further established that Appellant had been open for service of food and hookah for a month since the time of the Department hearing, without any complaints.<sup>6</sup> This weighs in favor of granting the application and is consistent with the Board’s practice, as cited in the decision, “to require an applicant to establish itself first as a restaurant and then to reapply for an alcoholic beverage license at a later date when the Board has some evidence before it as to the nature of the business being conducted at a particular location.” After being denied the option to provide this proof directly to the Board on a motion for reconsideration, the Appellant was afforded the opportunity to and did in fact demonstrate its lawful operation to the Department.

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<sup>5</sup> See, e.g., *Tavone v. Town of West Warwick Bd. of License Com'rs*, 1990 WL 10000210 at 1 (R.I.Super.,1990).

<sup>6</sup> Though counsel for the board briefly cross-examined the owners as to their compliance with R.I. Gen. Laws § 23-20.10-6 and § 23-20.10-2 (permitting and defining “smoking bars”), no specific evidence of a statutory violation was proffered in this case.

Finally, the undersigned received testimony that there are three liquor establishments within a three block radius, a restaurant, bar, and liquor store; and that all ten or so other hookah bars operating in the state, except one, have been granted a liquor license, most of them being full liquor licenses. The Board did not present any evidence that would tend to demonstrate that the Applicant's qualifications and/or business plan are not consistent with similar application approvals.

#### **VI. Findings of Fact**

1. Sections I-V of this decision and order are incorporated herein as findings of fact.

#### **VII. Conclusions of Law**

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-1-1 *et seq.*, R.I. Gen. Laws § 3-7-21 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws §42-35-1 *et seq.*
2. R.I. Gen. Laws § 3-7-21 vests the Department with broad discretion to decide whether or not to grant a liquor license application.
3. There was no legal remonstrance under § 3-7-19.
4. Considering the testimony of the Appellant's owners and the lack of specificity of the objections, denial of the license is not warranted.

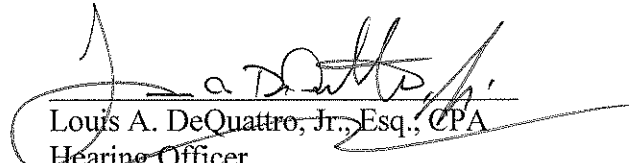
#### **VIII. Recommendation**

It is recommended that the Board be ordered to grant the License to the Appellant, subject to any and all customary approvals such as fire, health and the like. Nothing in the decision should be construed to limit the Board's power to impose additional conditions on this license (e.g. setting an earlier closing time pursuant to § 3-7-7); provided, however that the imposition of such conditions is within the scope of the Board's authority, reasonably related to

the purposes of Title III, and subject to appropriate procedural safeguards; or, provided that the Appellant voluntarily consents to the desired conditions.

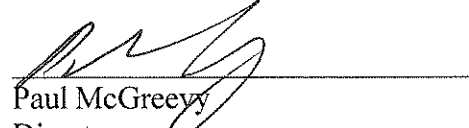
As recommended by:

Date: 2/21/2013

  
Louis A. DeQuattro, Jr., Esq., CPA  
Hearing Officer  
Deputy Director & Executive Counsel

I have read the Hearing Officer's recommendation and I hereby (circle one) adopt, reject or modify the recommendation of the Hearing Officer in the above-entitled Decision and Order.

Date: 25 Feb 2013

  
Paul McGreevy  
Director

Entered as an Administrative Order No.: 13-011 this 25<sup>th</sup> day of February, 2013.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.



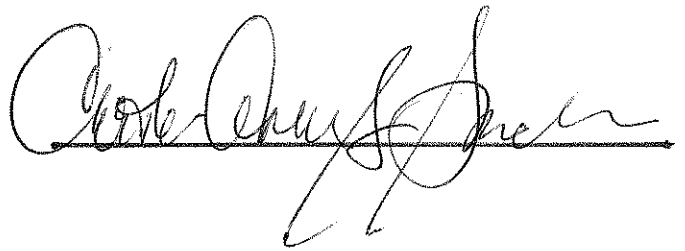
CERTIFICATION

I hereby certify on this 25<sup>th</sup> day of February, 2012 that a copy of the within Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

Sergio Spaziano, Esq.  
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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics

A handwritten signature in black ink, appearing to read "Sergio Spaziano", is written over a horizontal line. The signature is cursive and somewhat stylized.